P. F 28 of 97

G. R. S. IX-5]

Previous references.

L. R. 1095 of 96.

1897-98

191 .

(L. R)

File No. 1095 of 97.

Serial Nos. 1—13

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1—13

major ~~Part~~ B for March 1899.

SUBJECT.

Graft rules framed by the Supdt. Rev. Survey
about the trees from on the bank of the
survey includes a small part of the
occupied survey number.

W D 1250—28-1-19

Received.
B&S

Abstract of the reports received from the Dy Comrs and the Director of Agricultural Statistics, giving their opinion on the draft rules proposed by the Survey Supdt, regarding the right to trees on the banks and beds of streams, included in, and forming part of occupied survey numbers.

The Dy Comrs of Bangalore and Kadur * are of opinion that the rules proposed give too liberal a concession to occupiers of lands. They consider that, wherever the area occupied by such streams is deducted and is left unassessed at the Survey Settlement there can be no grounds for conceding the right to trees in such area to the owners of lands. If, on the other hand, the area is not so deducted but is assessed, it is reasonable that the trees thereon should belong to the owners.

* S. Nos: 3 & 6.

The Dy Comrs of Mysore and Chitaldroog * consider the rules proposed

* S. Nos: 7 & 6.

been
as reasonable and they
are of opinion that they
may be adopted.

The Dy Comm[r] of
Shemoga[†] is of opinion †S. No: 9.
that there is no necessity
for laying down the rules
proposed as he considers
them to be merely decla-
rations of what should
be understood as the
existing law on the
subject. The Sub Dis[l]
Officer of Sagar, whose opinion
was called for by the Dy
Comm[r], suggests the addition
to the rules, of a common
proviso expressly prohi-
biting the cutting of the
trees so situated, leaving
the ryot free to remove
them after they die.

The D[y] Comm[r] of
Kolar[†] considers the draft †S. No: 5
rules suitable for adoption
but points out that cer-
tain deficient instructions
are required for their
practical working.
1. The practice of putting
only one set of boundies
in the case of small jungle
streams, marking off the
boundary of the fields on
one side, gives the whole
right of grazing &c to the
owners on that side on
which the stream is in-
cluded; and this is

considered a hardship on the owners of the fields on the other side.

2. In the case of large streams as no boundary marks are put up to indicate the land reserved for the margin of the stream, it will not be easy to observe the proposed second rule without recourse to the measurement books.

3. Before giving effect to any rules on the subject provision should be made for selling to occupants themselves or others the lands exceeding a given minimum and the trees on the margin.

S. No: 8. The Dy Comm[r] of Kaira[t] agrees with the views of the Survey Supdt but adds that the right of the occupants should be restricted to enjoying the fruits, but not to cut the trees down, although they may utilize them when dry.

S. No: 11. The Dy Comm[r] of Surat[t] considers it a mistake to include well defined streams and channels in private lands. He is of opinion that such streams and channels must be regarded as "Pled Kharaba" and the govt: right to the trees and grass growing

on their banks and beds may be made over to the occupants at a valuation.

The Director of Agricultural Statistics considers that the area of such streams should be deducted from the area assessed for cultivation and that the right to trees on the banks and beds of such streams should be reserved to Government. ✓ No. 4.

It will, thus, be observed that the Deputy Commissioners, Chittagong, Kolar and Bareilly are in favour of the adoption of the rules proposed, with this difference, however, that whereas first two Officers recommend favour the adoption of the rules in their entirety, the second two Officers suggest certain additional qualifications.

The Dy Commr of Bangalore and Kadur partially favour the rules not being enlarged to extend the right of owners to cases where the area is deducted as Phut Kharab and is left unassessed.

The Dy Comm[r] of Tumkur

and the Director of Agricultural statistics differ from the Survey Supdt. and both that the area should never be included in private lands, and that the right to trees should be reserved to Govt. There is, however this difference in their opinion, that whereas the former considers that the right may be made over to occupants at a valuation the latter considers that it must be absolutely reserved to Govt.

Finally, the Dy Comr of Thana considers the rules as merely declaration of what should be understood to be the existing law on the subject and that as such it is unnecessary to lay them down again

B.R.
22/3/98

The Survey Supdt in Bombay has referred to the existence of rules identical with those now proposed in support of their adoption. The inconvenience of including the beds of feeder channels ~~included~~ in an occupant's Survey number is apparent from the fact that in case the occupant encroaches on the bed & cultivates it, there is apparently

No provision requiring for permitting or enacting the occupant. There is ... the reason for the Director of Agricultural Statistics & the Commr of ... being opposed to the inclusion of the beds of feeder channels in area occupied ...

There is no inconvenience in the working of these rules in Bombay as there they have an Irrigation Act, sec. 61 of which provides for penalties for "obstructing, damaging, altering any canal", "Canal" being defined in sec. 3 of the Act so as to include "any natural collection of water or natural drainage channel".

= The ... practice in this respect is not now ascertainable, as the S.O. regarding Forests & the Forest Manual - referred to in the footnote to S.O. No 5 - are not available, the one ... Rao's edn & the other in the Govt Press Madras.

[illegible] 20/3/98.

9757

Papers ... the ...

10/5/98

Sub to Rev Commr ... [illegible] 10/5/98

Before dealing with this matter further the ... ... to ... ... for (1) any ... he has to make. Meanwhile it should be ... ... including the ... in the ... is ... and ... must be reversed. An endorsement also ... given to the ... The papers may be laid before the ...

[illegible] 5/5/98

The ... ... also to explain ... in such cases ... streams ... channels ...

... [illegible] the ... & ... reserved ...

The Survey Supt's reply
has been received

As regards the points raised
in the letter of the Kolar Dt
Dy Comm^r, Vepr. the Survey Supt
States that as regards major
Jungle Streams the Dy Comm^r's
objection cannot affect
the Sanctity of the proposed
as the ~~recorded area~~ map
itself will be quite sufficient
to assist all encroachments
& that, in the case of
minor Jungle Streams,
the dormant claims of
adjoining occupants
should not be allowed to
be revived
As regards the question

whether the beds of such
Streams cannot be reserved
the Survey Supt States
that such are reservation
will be inconvenient &
unfair to the rights & will
besides [illegible] responsible
from the magnitude of
the operation

4/18/95

9 Submitted.

The two draft rules to be inserted in the beginning have been copied out and an abstract of the letters put up. The Kolar Dy Commrs letter No 1723-42 dy 13.11.97 and the Sur: Supdt's No 220 dy 23.9.98 are retained as they are. Vide the Rev: Cir's order.

After the abstract is approved of, the necessary correction will be made in the proof.

HM
21/2/99

Proceedings of the Govt: of Mysore.

Read the following papers:-

(1) Proceedings of Govt: No. 3168-76 Pet 478 dated 23rd Sept. 1897, circulating, to the Deputy Commrs: of Districts and the Director of Agriculture and Statistics, the draft rules proposed for the Sujji Rev: Survey, regarding the right to trees on the banks and in the beds of streams included in, and forming parts of, occupied Survey numbers, and requesting them to favour Govt: with their opinions regarding their adoption.

(2) Replies to the above:

1. Letter No 609 dy 12-11-97 from the Dy Commr: Bangalore Dt.
2. Letter No 1723/492 dy 13-11-97 from the Dy Commr: Kolar Dist.
3. Letter No 487/458 dy 25-11-97 from the Dy Commr: Chitaldroog Dt.
4. Letter No 698 dy 11-12-97 from the Dy Commr: Mysore Dt.
5. Letter No 600 dy 2-1-98 from the Dy Commr: Hassan Dt.
6. Letter No 796/058 dy 8-1-98 from the Dy Commr: Shimoga Dt.

(1) Draft to be approved
2) This has to be framed in the Revenue
3) There is some little doubt as to the Secn: under which the rule is to be passed. The rule appears under Sec 241, as the subject-matter relates to the disposal of waste lands.

7. Letter No 592 dy 25-2-'98 from the Dy Commr: Kolar Dt
8. Letter No 842 dy 13-3-'98 from the Dy Commr: Tumkur Dt.

9. Memo dy 19-11-'97 from the Director of Agricultural and other Statistics in Mysore.

(3). Letter No $\frac{2233}{P.F.\ 25-97}$ 9/14-9-'98 to the Supt, Mysore Revenue Survey, forwarding copy of Letter No $\frac{1723}{492}$ dy 13-11-'97 from the Dy Commr: Kolar Dt for any remark he may wish to make and requesting him to explain why the streams and channels in all such cases should not be excluded from the holding and treated as a reserved land.

(4) Reply of the Supt. Rev: Survey Letter No 220 dy 23-9-'98 which is as follows:——

(to be copied in ~~X~~ extenso).

Order thereon No.

1. The draft rules proposed by the Survey Supt: are sanctioned.

12

2. The following Notification will be published in the Mysore Gazette:—

Notification.

In exercise of the powers conferred by Clause (d) of Section 233 of the Land Revenue Code, the Govt of Mysore are pleased to make the following rule under Section 42 of the said Code, to be read as Rule XIII. A of the Rules under the Land Revenue Code published under Notification No 150 dated 22nd July 1890:

XIII. A. (1) Of trees, other than Sandal or trees specially reserved under Section 42 of the Land Revenue Code, grow upon the banks or dry bed of a stream included in an occupied Survey Number they belong to the occupant.

Right to trees on the banks and in the beds of streams included in Unoccupied portions of occupied Survey Numbers.

2. When a stream forms the boundary of an occupied Survey — Number, the occupant should be allowed the benefit of the trees on the area recorded in the Survey Registers, all beyond it being considered the property of Govt: subject to the provisions of the Land Revenue Code regarding alluvion — Sections 61 and 62.

C1 & C2

Off. Secretary.

To

The Deputy Commr: of Sirsi.

The Supdt of Rev: Survey in Mysore.

CJK
7/4/90.

Remarks made by the Revenue Commissioner Eastern Division on the proof of Govt Pro. No. G.120-25 dt 2.3.99.
R.T. 25-57

I agree to the new Rule proposed to be added to Rule XIII of the Land Revenue Rules. I have only one suggestion to make & I should not press it is adopted if it is inconvenient to adopt it at this stage.

Vide next Sheet

and that this
~~that~~ it appears to
me needless to print
in full all the title
of the Act - An
abstract, if one was
necessary, might
have perhaps done
would have sufficed
Possibly ~~the~~ Clerk
of Common Pleas
Solicitors
might have been given
in full.

I also agree with
the Bishop that the
draft Rule by the
Supreme Court
should have been
printed at the end
of the Prayer.

Jno Thompson
10/12/89

(2)

19

Proceedings of the Government of Mysore, Petition, dated 23rd September 1897.

READ:—

Petition No. 1188, dated 5th October 1896, from Gubbi Setti, residing in Urdigere in the Tumkur taluk, appealing against the order of the Deputy Commissioner, Tumkur district, approving of the action of the Amildar, including in the "Amrai sale" for 1895-96, the produce of certain honge trees standing on the banks and bed of the feeder channel of the Maidala tank, running through the petitioner's lands Survey Nos. 41 and 44 of the above village.

2. Letter No. 855, dated 28th June 1897, from the Superintendent of Revenue Survey in Mysore, which is as follows:—

I have the honor to acknowledge receipt of your letter No. 10524—P. 1734, dated 29th May 1897, forwarding a petition from Gubbi Setti of Urdigere, appealing against the order of the Deputy Commissioner regarding the sale of certain honge trees and asking my opinion in the matter.

2. The deductions as "Phot kharab" in Survey Nos. 41 and 44 were 33 gunthas and 5 guntas respectively. These deductions were on account of foot-paths, house, rocky portions, &c., but not on account of the feeder channel to the Maidala tank which was not deducted as "Phot kharab," inasmuch as grass grow on the dry bed of the same.

3. The Deputy Commissioner in my opinion is wrong in supporting the action of the Amildar in including in the "Amrai sale," the produce of the honge trees which had sprung up on the banks and bed of the feeder.

The Land Revenue Rules are deficient in any ruling on the important question involved upon which I have received other references than that now in point.

My views will be readily understood from the ruling which I now propose—

1. If trees, other than sandal or trees specially reserved under Section 42 of the Land Revenue Code, grow upon the banks or dry bed of a stream included in an occupied survey number, they belong to the occupant.

2. When a stream forms the boundary of an occupied survey number, the occupant should be allowed the benefit of the trees on the area recorded in the Survey Registers, all beyond it being considered the property of Government subject to the provisions of the Land Revenue Code regarding alluvion—Sections 61 and 62.

In the particular case now in point, there can be no doubt that the Amildar was wrong, for he ordered the sale of the produce of trees growing on land which was recorded as private property, thus infringing the very clear rule that whatever is affixed or planted in the soil should be subject to the same rights of property as the soil itself.

The rules which I have suggested at para 5 above would allow to the occupant the benefit of all trees on the banks or beds of dry streams included in an occupied survey number, even if such stream had been deducted as "Phot kharab." In the case now in point, the stream had not been deducted as "Phot kharab".

My proposed ruling may appear somewhat liberal, but it is the same as obtains in Bombay. The raiyat or occupant is more interested in preventing the washing away of the banks than any one else and his efforts would be towards encouraging alluvion. To do this, he would have to maintain existing trees and plant new ones.

I beg to return petition and other enclosures to your letter under reply.

No. 3168-76—Pet. 478, DATED, BANGALORE, 23RD SEPTEMBER 1897.

ORDER THEREON.—The draft rules proposed by the Survey Superintendent in para 5 of the letter read above are circulated to the Deputy Commissioner of districts and the Director of Agriculture and Statistics in Mysore, with the request that they will be so good as to favor Government with their opinion regarding their adoption.

C. SREENIVASIENGAR,
Secy. to Govt., Gen. & Rev. Depts.

To—The Deputy Commissioners of Districts.
The Director of Agriculture and Statistics.

Cxd—H.A.R.

1897-98

GOVERNMENT OF MYSORE

PETITION

PROCEEDINGS

Dated 23rd September 1897

No. 3168-76 / Pet. 478

Circulating, to the Deputy Commissioners of districts and the Director of Agriculture and Statistics, the draft rules proposed by the Superintendent, Revenue Survey, regarding the right to trees on the banks and beds of streams included in, and forming part of, occupied survey numbers, and requesting them to favour Government with their opinions regarding their adoption.

M.G.C.P.B.—2-11-97—120

Pt. No 3502 of 96-

Refers last ch.
Last
3076
Submitter
Sen
97

L.R. 165--97-2

It is to be presumed from the remarks of the Survey Supt that the precise question does not come under "canals & water-courses" or "beds of tanks" which under Sec 36 of the Land Rev Code is the property of Govt. Nevertheless the Supt is of opinion that no objection would be raised by the Bombay Survey

A copy of the Bombay Survey - extracts from same & 2nd Edn of Bombay Rev Code - referred to & Collector is pressed to

The matter is explained & which have to be ~~amended~~ explained under Sec 42 of the Land Rev Code.

Sub to 2nd Councillor

Rd 7/7.
2/7/97.

2/7/97

Circulate the papers to the Dy Secys & ask them to favour us with their opinions regarding the proposal to alter & amend Sec 42 as suggested

Draft Rec
18/7/97

15/7/97

Cmt

Draft Rec

12/7/97

Gen. Serial No. 30.]

7

1897

From

The Supt Mysore Revenue Survey

To

The Chief Secretary to the Govt Dewan of Mysore.

(Revenue and General Depts.)

Dated

Despatched 28th June 1897

Received

Enclosures No. One file

General No. 555
No.

In reply to Secretary's letter No 10529 dated 29/5/97 P 1739

SUBJECT.

Reporting on petition of Gulla Sheltu & Govindayya received with the above and suggesting a fixed ruling regarding the property in trees on the banks and beds of streams included in and forming the boundary, respectively of occupied Survey Numbers.

References—(to be entered only in the Dewan's Office).

Petition 28/6/97

Recd 29/6

REVENUE DEPT. Gl. No. 9727 No. 12757 28 JUN 97 DEWAN'S OFFICE

No 855

21

Survey Superintendents office

Bangalore 25th June 1897

To

The Secretary to the Govt.

of Mysore (Revenue and General Depts.)

Sir,

I have the honor to — acknowledge receipt of your letter No. 10524 / P1734 dated 29th May 1897 forwarding a petition from Gubbi Shetti of Sirdagiri appealing against the order of the — Deputy Commr. regarding the sale of certain Mango trees and asking my — opinion in the matter.

2. The deductions as "pot Kharab" in Survey Numbers 41 and 44 were 33 guntas and 5 guntas respectively. These deductions were on account of foot paths, house, rocky portions &c

bar

but not on account of the feeder channel to the Mandal tank which was not deducted as "pot khrab" in as much as grass grew on the dry bed of the tank.

3. The Deputy Commr. in my opinion is wrong in separating the action of the Amildar in including in the "Amani" sale the produce of the Mango trees which had sprung up on the banks and bed of the feeder.

4 The Land Revenue Rules are deficient in any ruling on the important question involved, upon which I have received other references than that now in point.

5. My views will be readily understood from the ruling which I now propose.

If trees, other than Sandal or trees specially reserved

received under Section 42 of the Land Revenue Code, grow upon the banks or dry bed of a stream included in an occupied Survey Number they belong to the occupant.

2. Where a stream forms the boundary of an occupied Survey Number the occupant should be allowed the benefit of the trees on the area recorded in the Survey Registers, all beyond it being considered the property of Govt. subject to the provisions of the Land Revenue Code regarding alluvion — Sections 61 and 62.

6. In the particular case now in point there can be no doubt that the Amildar was wrong, for he ordered the

the sale of the produce of trees growing on land which was recorded as private property thus infringing the very clear rule that whatever is affixed or planted in the soil should be subject to the same rights of property as the soil itself.

7. The rules which I have suggested at para 5 above would allow to the occupant the benefit of all trees on the banks or beds of dry streams included in an occupied survey Number, even if such stream had been deducted as "pot Kharab" in the case now in point the stream had not been deducted as "pot Kharab."

8 My proposed ruling may appear somewhat liberal but it is the same as obtains in Bombay. The Ryot or occupant is more interested in preventing

preventing the washing away of the
25
banks than any one else and his
efforts would be towards encourag-
-ging allurion. To do this he
would have to maintain existing
trees and plant new ones.

9 I beg to return petition
and other enclosures to your letter
under reply.

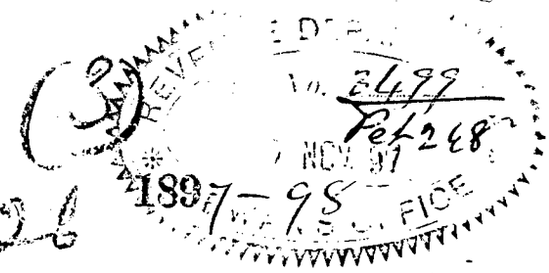
I have the honor to be

Sir,

your most obedient Servant

Dupt. Ahjara Revenue
Survey

Gen. 31]



From The Dy Commissioner
Bangalore District

To The Secretary to the Govt
of Mysore
Genl & Revr Departments.

Dated
Despatched 12th & 15th September 1897.
Received

General No.
No. 609

Enclosure No.

In reply to Govt Order
No 3165—76 of the 23rd September
Pet: 478
1897.

Submits opinion on the
Survey Supdts suggestions
re the right to trees on the
banks and in the beds of
streams to the holders of the
survey fields in which
such streams lie.

Reg: event generation
Pet: No 818 dt 11-9-97.
Submitted to the 2d Counsellor
on 21-10-97. (Case sent by mail
Lab: BK)

AK
19/11/97

Inserted
BK
19/11/97

Kept with Mr Rajasekhara
Rec'd 19/11/97

L.R. 105-97-3

Please see
Pet: No: 818
11-9-97
AK
19/11/97.

Petition for
17-11-97.

L. No. 609

Bangalore District
Dy. Commissioner's Office
Bangalore 12th November
1897

To

The Secretary to the
Government of Mysore
Revenue Department

Sir

With reference to Govt. Order
No. 3158-78
Rs 478 of the 23rd September 1897
calling for opinion on the Survey
Superintendent's suggestions to allow
the right to trees on the banks and
in the beds of streams to the holders
of the survey fields in which such
streams lie, I beg to submit that,
in my humble opinion, the
proposed concession is much too
liberal - If the area occupied
by such streams is deducted at
the time of the survey settlement,
and is left without assessment,
I fail to see the reasonableness
of conceding to the holders of the
fields in which such streams

lie, the right to the trees on such area - If such area is not so deducted, & 24 such is assessed, the trees thereon should of course go to the holders of the fields in which it is included and assessed -

I have the honor &c

Sir

Your most Obt. Servant

Wm Winterbotham

Dy. Commissioner

Wells

Gl. No. 3592
Pet 260
20 NOV 97
SECRETARIAT OFFICE
189

From

The Director of Agriculture & other Statistics in Mysore

To

The Secretary to the Govt. of Mysore,

_____ Dept.

Dated 17th November 97

Despatched

Received

General No. Genl

No.

Enclosure No.

Recommending certain principles to be adopted regarding the ownership of trees in the bed & or banks of a stream & their cultivation there -

References to be marked.

Please see the remarks of the Asst Secy on Pet 248 of 1897.

Submitted

23/11/97

Why were not the Records used in manuscript before they were printed?

23/11/97

L.R 165-97-1

Memo.

30

As a rule, it is de-
-sirable that the ownership
of trees should rest in
the same individual as
the ownership of the land
on which the trees are
standing.

2. Important feeder
channels of tanks should
be conserved and preserved.
Cultivation in their bed
or banks should be pro-
-hibited; and with this
view, their area should
be registered as Kharáb
and

Submitted with reference
to Government Proceedings
No. 3168-76 dated 23rd Sep: 97
Pet. 478
(received 13th November 1897).

... & deducted from the area assessed for cultiva-tion, just as public foot-paths are. That in any case, at measuring time, the bed was dry and overgrown with grass, is no sufficient reason for assessing the area as if for cultivation & thereby allowing private rights of occupancy to grow in respect of them.

3. It will sometimes happen that a piece of land cannot be given out for occupation and that there

there are trees on it yield-
ing revenue payable pro-
duce and that to lease
these trees to a stranger
may be the cause of undue
annoyance and trouble
to the occupant of the
Survey number in which
it is included or to which
it adjoins. In such cases,
it will be considerate on
the part of Government
to allow local officers to
lease out the trees from
time to time to this
occupant for a term and
for a fixed reasonable rent.

4. The right of ownership

in

in trees is often exercised by only cutting them down. Therefore, it is undesirable unnecessarily to create ownership in trees (whether productive or otherwise) growing on land which is not private property such as the banks of rivers and streams. It may be that in some of these cases, the trees have been planted by private individuals from charitable motives. But as such planting is on land which is not private property, no private rights can arise, nor need be allowed to arise.

5. The above are the

34

general principles which

I would recommend to

be adopted.

6. In the particular case

in question, it is strange

that the feeder channel

banks and bed have not

been deducted as Kharáb.

But judging from the

Topo-sheet, the Village

Uridigére seems to be on

the watershed between

two river basins and far

off from the Maidála

tank. The so-called feeder

channel in question is

therefore probably but the

the faint beginning of
one; and if this be so,
no harm will arise by
its being treated as private
property.

Director of Agricultural
& Other Statistics in Mysore

Gen. 31.]

1897-98

3759
Ref 250

36

From

The Deputy Commissioner,
Kolar District

To

The Secretary to the
Government of Mysore.

Revenue and General Departments

Dated 13 November 97

Despatched 24 " "

Received

General No. 1723

No. 492

Enclosure No.

Expressing opinion regarding the adaptation of the draft rules proposed by the Superintendent, Revenue Survey, regarding the trees on the banks and beds of streams included in and forming part of occupied Survey numbers.

Rev 25/11/97

Please see the remarks of the Asst Secy on pct. 248.

HC 27/11/97.

Secretariat
HK
26/11/97.

Asst. Secy to refer reports
HK 26/11/97

L.R. 155-97-5

Kolar Deputy Commissioner's Office
Dated 12th November 1897

To

The Secretary to the
Government of Mysore
Revenue and General Depart.

Sir,

With reference to Government Proceedings No 388-70 Ord 478 dated 20th September 1897, I have the honor to state that I concur generally with the views expressed by the Superintendent of the Revenue Survey. The Rules enumerated in Para 5 of his letter appear also suitable, but there are some drawbacks in the practical working of these rules which it is desirable to have definite instructions.

2. Jungle streams may be divided broadly into 2 kinds viz large and small. In the case of the small streams as a rule the Survey Department include their beds in the Survey Nos on either bordering their extent so that there should not have only one set of boundaries created on the Ghauts bank to mark off the boundary of the fields on that side. But it happens very often that the owners of the latter fields assert their right to Grazing in the bed of the stream quite as much as the owners of fields on the Ghauts side. In such

cases

Circle the section of the Survey Department in including the survey of the fields as one side in production of receipts and the legal custody of the section of the Survey Department as arbitrary.

2. Again in the case of the major streams though the lands are not included in Survey Nos as either side no encroachment marks are generally put up to indicate the land, except for the margin of the stream and it will not be easy to work the Land Records Unit introduced, because the measurement books (Tippani). In this connection it is also desirable to consider the provisions of Section 62 of Land Revenue Code which recognized the title of the owners of lands on the bank of a stream to the temporary use and occupation of alluvial formations of small extent.

(3) In conclusion, I would add that before giving effect to any rules on the subject, provision should be made for setting to defined boundaries of State Forest lands excepting a given minimum in extent as well as trees on the margin which have hitherto been recognized as Government property.

Yours truly,

Sd/-

Chief Conservator of Forests

Typed

Sd/-

for Deputy Commissioner

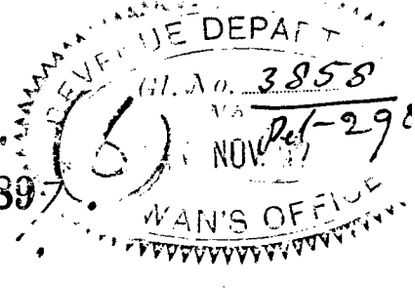
copied

Pet. 41-
29.11.97

L. Subramiliar.
R.K.
1/12/97
ad the 1/12/97
1/12/97

L.R. 105-97-6

(General Serial No. 30.)



189 7.

From The Deputy Commissioner
Chitaldrug District

To

The ~~Chief~~ Secretary to the ~~Govt~~
Government of Mysore.
General and Revenue

Dated 25th Department

Despatched 27th November 1897

Received

Enclosures No.

General No. L87 R 97-98
No. L88 (1)

With reference to
Proceedings of Government
No. 3168-76 dated 23rd
Pets 478
September last, regarding
the right of occupants
of land to trees growing
in the land and on the
banks of streams in
their holdings, has
the honor to state
that the said Enclosed
by

by the Superintendent
Revenue Survey may
be adopted, as it is
calculated to ensure
uniformity of procedure
and no objection can
be raised against it.
J. Allan Esquire
Dep. Deputy Commissioner
Cuttack

(7)

No. 693
Enclosure No. —

DEPUTY COMMISSIONER'S OFFICE,
MYSORE DISTRICT,
Dated Mysore Decr 11th 1897.

L.R. 105-97-7

41

To

The Secretary to the Government of Mysore,
Revenue and General Departments.

SIR,

Adverting to Government Proceedings No. 3168-76 dated 23rd September 1897 circulating for opinion, the draft rules proposed by the Superintendent Revenue Survey, regarding the right to trees on the banks and beds of streams included in and forming part of occupied survey numbers, I have the honour to state that the rules proposed by the Survey Superintendent in para 6 of his letter embodied in the said Proceedings appear reasonable, and may with them be adopted.

I have the honour to be,

Sir,

your most obed^t Servt

Deputy Commissioner
Mysore District

Compd
ucu

a 334
Rel 317

189 7. 98

From

The Deputy Commissioner,
Mysore District.

To

The Secretary to the Govt. of Mysore,
Revenue and General Departments.

Dated 11th
Despatched } Dec 97
Received

General No. 698
No.

Enclosure No. —

Please see Rem. 230

6/12/97

Jawari etc. reserved
Cl. Survey Inspector and
Taluk
Office file
with Settlement's file
dated 2-dec

Chem file made
with

(8)

No: 666

Hazara District
Dy Commissioners
Camp Sabiri, the 22nd January
98

From

The Deputy Commissioner
Hazara District

To

The Secretary to the
Government of Khyber
General & Rev: Deptt
Peshawar

L.R. 105-97

Sir

Adverting to the Govt Proceedings
no 3168-76 Rel- 4/8 dated 23rd September last,
I have the honor to state that I agree with Col.
Grant in considering that the trees standing
within an acquired survey number are the
property of the occupant whether the portion or
portions on which they stand are or are not
declared as Khal-Khasab, but if the Khal-
Khasab form a definite part or limit of a stream
the occupant may have regard for the limit of
the trees in consideration of his taking care
of the existing trees and planting new ones. He
should not be allowed to cut them down, in
as much as this would frustrate the object
for which the concession is granted, although
he may utilize dry trees.

I have the honor to be
Sir
Your most obedient
servant

Deputy Commissioner
Hazara

File relating to the subject as
first ws.

MK
18/1/98.

PZ 25797

Gen. Serial No. 31.]

4808
Pet 358.

1897

From

The Commissioner
Kadur District.

To

The Secretary to the
Government ~~Dept~~ of Mysore.
General and Rev Department
Bangalore

Dated 2d
Despatched 4 } January 1898
Received

Enclosures—No.

General No.
No. ---

In reply to the 3168—76 dt
23d. September 1897 P. 478

Submitting opinion on
the draft Rule or Rules
framed by the Superintendent
of Survey regarding the
right to trees on the
banks & bunds of streams

Mr Hamilton Rice
27/11/98

25977 — 1897 — 4895 — 22361 — 11 JAN. 6 — REVENUE OFFICE

64 (9) 1898

Petition 4
10-1-98

File relating to the subject
is put up.

AF
18/1/98.
Send
Reports from the Collrs
Trichur and Cadur are
due
A draft reminder
is put up.

JE
19-1-98

L.R. 105-97-9

From The Deputy Commr
Shimoga

To The Secretary to the
Govt of Mysore
Revl and Rev: Depth

Dated 5th
Despatched
Received } January

General No. 796
No. 65-8

Enclosure No. 1

With reference to
Govt Pro: No. 2163-76
Pet 4174
dated 2? September
1897, submits opinion
on the draft rules
proposed by the Supdt
Revenue Survey,
regarding the right
to trees on the banks
and beds of streams
included in, and form-
ing part of occupied
Survey numbers.

No. 796 encl
658

Deputy Commr's Office
Singapore
8th January 1877

45

To
The Secretary to the
Government of Singapore
Genl and Rev: Depts

Sir

I have reply to Genl Revs:
Circ. 355-76 dated 22nd September
Pet: 474
1877 calling for opinions
on the draft rules proposed
by the Superintendent Penang
Survey, regarding the
right to trees on the
banks and beds of streams
included in and forming
part of, occupied Survey
numbers, I have the
honor to submit my

opinion as follows.

2. The proposed Rule

No 1 in the General Forms

in which it appears seem

to me to be unnecessary,

as the General Rule of

Law stated by the Superin-

tendent of Revenue

Prosecutions in paragraph 6

of his letter is sufficiently

clear and sufficient

for the purpose. I would

therefore (if at all) re-

strict the Rule so as to

give the Right of Pre-

emption on Points of

the Land declared as

"Private Woods" for the

occupant. I believe however that even this
is unnecessary, as under the law in force, the occupant has the right of enjoying all "first Riparian" in any manner he can except of course so as to interfere with any specific purpose for which such Riparian may have been reserved.

47

2. The second rule would also be unnecessary but for the fact that where well defined streams exist as boundaries, boundary marks may be dispensed with. For such streams generally

differ in area occupied at different times, it may have disputes to enact a rule like this. But even without it, I am of opinion, that every district would have to be disposed of in accordance with the principle.

4. On the whole there, I am of opinion, though with diffidence, that there is no necessity for the laying down of these rules, as they are merely a declaration of what should be understood as the existing law.

5. Of the district officers

committed, the Sub-Division
Officer of Ryan, has
suggested some amendments
and a copy of his letter
is appended. The two General
Assistant Commissioners
are for the rules being
enacted as proposed.

I have the honor to be
Sir
Your most Obed.t Servt.

H. Mainwaring

Offg Deputy Commr.
Shimoga Dt.

WRL

No. 168

Sub Division office
50
Sagar, Dated 20th
December 1897

To

The Deputy Commissioner
Shimoga District

Sir,

In reply to your memorandum No. 1758
of the 14th instant, I
have the honour to
submit the following
remarks.

2 The case which has
arisen in the Tirthahalli
District is a very simple
one.

A tenth feeder passes
through two occupied
fields. The Engineers

Growing on the banks and bed of the stream have excluded by the dredger in the Amaroo Lake. It turns out that the "Pilot Island" dredged from the mouth in question does not include the feeder channel which is therefore an integral part of the excised area. If the Surveyor had seen the necessity for finding this out by reference to the Survey Department there could probably have been no interference with the mechanical

rights of the occupant.

52

I have not come across cases in which such trees have been specially reserved under section 42 of the Land Revenue Code, as moves the proposed Rule No; I has suggested itself to the Bar under experience of the Superintendent of Revenue Survey, it may be retained with perhaps the addition of the words "and whether declared as Protected Forests or not" after the words "occupied survey number" and before the word "they."

2. Proposed Rule No 2

of the same will be worthy of adoption. But I would suggest to suggest the addition of a common provision to both the Rules expressly prohibiting the cutting of the trees so situated leaving the Kyot free to remove them only after they die.

4. The Builders in the Rule 8 division have not replied to my circular inviting their opinions on the subject.

I have &c.

signed J. L. Ramanujam Iyengar
Deputy Supt. Forests in charge
of the Sagar Rubber
Depy"

H. Muzumdar

Offg Deputy Conservator

(10) 1898 6316
Pet 463

From The Deputy Commr
Kaduna District

57

To The Secretary to Govt
General and Revenue Depts

L.R. 105-97-10

Dated 25 Feb

Despatched - / 4 / Telegram

Received -

General No. 592
No.

Enclosure No. /

Giving opinion on the draft rules proposed by the Superintendent Riverine Survey, regarding the right to trees on the banks and beds of streams included in and forming part of occupied Survey numbers.

Rev 2/3/98

Read 4/3

File on the subject in future up

Subm with the papers to D&Y Secretariat

AK 4/3/98

5/3/98

Deputy Commissioner's office

Kadur District.

Chikmagalur 25th February 1898.

From

The Deputy Commissioner

Kadur District.

The Secretary to Government

General and Revenue Departments.

Sir,

With reference to Government Proceedings No. 3165-76 / Fa 178 dated 23rd September '97 (received 12th November last) calling for my opinion on the draft rules proposed by the Survey Superintendent regarding the right to trees on the banks and beds of streams included in and forming part of occupied survey numbers, I have the honour to state that concurring with the opinion of Mr Ramaswamiengar Extra Assistant Commissioner, Copy of his No. 96 dated 9th instant accompanied), I differ from the Survey Superintendent in regard to the suggestion contained in para - of his letter referred to in the above as the right to trees on the banks or beds of streams included in an occupied survey number cannot be extended to the occupants

in cases in which such streams, nallas, &c are declared as 'Phut Karab' and no assessment is levied on the extent so declared.

2. With the above exception, I agree with the views expressed by the Survey Superintendent.

I have the honour to be
Sir
Your most obedient servant

Deputy Commissioner
Kadur District

Dated 9th February 98

From

57

The Extra Assistant Commissioner
Kadur District.

To

The Deputy Commissioner
Kadur District.

Sir,

With reference to your official memo No. 434 dated 19-11-97 forwarding for expression of my opinion, the amendments urged by the Revenue Survey Superintendent in regard to the rights of trees growing on the dry beds of channels running within the occupancy of a Survey number, I have the honour to state that I quite agree with the Survey Superintendent in his proposal made in para 5 of his letter to Government; but in para 7 of the same he states that such rights to trees may be extended even to cases in which the streams running through a survey number is declared as "Phot Karab". In regard to this, I beg respectfully to differ from the liberal views the Survey

the superintendent has taken of the matter.

2. The right to trees ought not, in my opinion, be extended to roots more than are now existing, unless the stream has not been deducted from this holding as Pot Kanal.

3. If the stream is deducted as such, the proportionate assessment is reduced and the holder cannot have any right to trees on their usufruct.

I have the
honour to be
Sir
Your most obedient
servant

Deputy Commissioner
Kadur District

General Serial No. 30.

6738
21/4/97

189.7

From The Deputy Commissioner Tumkur District.

To The Secretary to the Govt of Mysore Revenue Dept.

Dated 13th March 1897

Despatched 15th March 1897

Received

Enclosures No.

General No. 542

No.

Government Bro: No. 3165-76 dated 23rd Octr 1897 September last.

Furnishes the opinion on the subject of the right to trees growing on the lands or beds of tanks included in Inam Jodi-mung part of occupied land

Returns 21/3/98

17.3.98

File relating to the subject as put up

AK 19/3/98

Subd 21/3/98 MRJ

To Ch[r] & Commissioner for his abstract of the report 21/3/98

Subd to 2nd Cavalle with a memo 29/3/98.

R36.30 Rm 29.3.98.

L.R. 165-97-11

Central Jail Press, Bangalore.—6-3-97.—10,002.

No. 842

Tumkur District
Deputy Commissioner's Office
Camp Nonavinakere Dated 13th March 98.

To,

The Secretary to the
Government of Mysore
General and Revenue Department.

Sir, Adverting to Government Proceedings No. 3168-76 Petn. 478 dated 23rd September last, calling for opinion on the subject of the right to trees growing on the banks or bed of streams included in or forming part of occupied land, I have the honor to state that, in my opinion, it is a mistake to include well-defined streams and channels in private lands. These streams and channels are often feeders of tanks whose interests are likely to be prejudicially affected by their being included in private lands and thereby subjected to occupancy rights.

I/f.

If, for the purposes of the Survey Department, it be found inconvenient to exclude such streams and channels from assessed Survey numbers, they may be regarded as "Phot Kharab" and the Government right to the trees and grass growing on their banks or bed may be made over to the occupant at a valuation, subject to the proviso that he shall not in any way interfere with the flow of water in them.

2. Cases have occurred in which the inclusion of tank feeders in private lands have resulted in encroaching allu-vion to such an extent as to diminish to a very appreciable extent, the supply of water to the tank dependent on the feeders and it is desirable to remedy this evil wherever it is found to exist.

3. The principle under which the right to the trees standing on a Survey number is conceded to its occupants is, I believe, based upon the supposition that the trees must have been planted by private

private individuals. Trees growing on the banks and beds of streams and feeder channels do not come under this category and it seems to me reasonable that the occupant of a land in which such stream or channel has been included by the Survey Department should have the trees.

I have the honor to be
Sir
Your most obedient servant

Assistant Commissioner
Tenkasi Division

R. 1724

REVENUE DEPARTMENT
No. 2233
SEP 26 1898
R. 143
DEWAN'S OFFICE

1898
63 (13)

From The Supt. Mysore Rev. Survey

To
The Chief Secretary to the
Govt. of Mysore.
Gen'l. Rev. Depts.

Dated 23rd September 1898

Despatched 24th

Received

Enclosure No.

General No. 220
No.

In reply to letter No. 2233 Pet. F. 25-97 of 17th Inst.

SUBJECT

Reporting opinion on the subject of draft rules regarding the right to trees on the banks and beds of streams included in a forming part of occupied survey numbers. —

References (to be entered only in the Dewan's Office).

Rec'd 27/9

D.7 25/97 Part I relating to the Enfranchisement

28/9/97. Subd to 1st Commr with papers and

Mly 29.9.98

Mly 4/10/98 L.R. 105.97-12

9990

My opinion of the above draft rules is that they are not necessary. I am disposed to concur in the views expressed by the Survey Supdt.

As this is a matter of Revenue Survey Commr.

4/10/98

Subd to the 2nd Commr

Mly 5/10/98

I agree with the views expressed by the Survey Supdt. in the foregoing Memorandum

Recd 17.10.98

Dft Mly 19/10/98 19-10

Recd 21/10

No. 220

Survey Superintendent's Office
Bangalore 23rd/24 September 1898.

To

The Secretary to the
Government of Mysore
Genl and Rev Depts

Sir,

I have the hon to acknow-
-ledge the receipt of your letter No.
2233/Pet 725-97 dated 17th September 1898
forwarding copy of Deputy Com-
-missioner's letter No 1723/492 of 13th
November 1897 on the subject of
draft rules regarding the right to
trees on the banks and beds of
streams included in and forming
parts of occupied survey numbers,
and

and at the same time asking me to explain why the streams and channels in all such cases should not be excluded from the holding and treated as reserved land

2 I will first of all, as far as possible, meet the Deputy Commissioners remarks as to the draw-backs to the practical working of the Rules suggested by me in my letter No 855 of the 28th June 1897.

Jan. 1901

3 The Deputy Commissioner suggests, with reference to the larger jungle streams excluded from the adjoining Survey Nos, that no boundary marks being usually

usually put up, it will be difficult
to work Rule 2 as proposed by
me without the aid of the
Measuring Field Book. As a
matter of fact the Survey Orders
are to the effect that a Boundh
must be put up showing the
direction in which the boundary
of any Survey branches off from
the stream and at the bends of
the stream itself stones are to be
erected. I dare say these stones
may not be easily found now
because they have not been
regularly inspected and kept up
and also stones are very easily
washed away on the banks of
streams. It was for this reason

that

that, in Rule 2, I made the
recorded area of the Survey
Number regulate the limit
to which the occupant of the
Survey Number in question
could claim rights in the strea
Very numerous cases requiring
measurement are not likely to
occur and, moreover, in most
cases the map itself will be
quite sufficient to adjust all
encroachments. The point raised
cannot affect the suitability
of the Rule proposed.

4. Next it is stated that as
a rule, the minor jungle stream
are included in one or other
of the adjoining Survey Numbe
and that the occupant of
the Survey Number in which
it

it has not been included asserts equal rights with the occupant of the other Survey Number. To this I can only state that at the time of Measurement, the Survey Numbers were measured according to the showing of the parties interested as to enjoyment and any dispute would have been at once taken up for settlement. Generally in such cases unless the stream is a very deep and marked one, enjoyment by one or other of the parties can be shown. It appears to me very late in the day to allow disputes to be reopened.

5 Beyond the above the Deputy

Comm

Commissioner makes no objections
69
to the proposed Rules.

6 As regards the question
which is now raised in your
letter under reply, as to why
the streams and channels in
all such cases should not be
excluded from the holding and
treated as reserved land, I can
only state that in my opinion,
apart from the inconvenience
and in some cases unfairness
to the Ryots, the magnitude of
the operation and the increase
of demarcation would be prohibit
=ive.

I have the honor to be
Sir.
Your most obedient servant

A Grant
D
Supt Mysore Rev Survey

In the Bombay please insert the word "following" in the 3rd line at the end - set between the words "the" & "Rules" & then give these 2 rules below with proper nos

1. "If trees other than Sandal or trees specially reserved under section 42 of the Land Revenue Code, grow upon the banks or bed of a stream included in an occupied Survey &c., they belong to the occupant."

2. "When a stream forms the boundary of an occupied Survey number, the occupant should be allowed the benefit of the trees on the area recorded in the Survey Registers, all beyond it being considered the property of Government subject to the provisions of the Land Revenue Code regarding alluvion—Sections 61 and 62."

(2.) Replies to the above —

I. Letter No 609 dated 12th November 1897, from the Deputy Commissioner, Bangalore District, stating

Abstract. The Deputy Commissioner's opinion is that the concession proposed in the draft rules is much too liberal; ~~The~~ states that if the area occupied by streams is deducted at the time of the Survey Settlement, there is no reason to concede to the holders of the fields wherein the streams lie, the right to trees on such area, and that if such area is not deducted, but is assessed, the trees thereon should ~~of course~~ go to the holders of the fields in which it is included & assessed.

II. Letter No. 1923-492 dated 13th November 1897, from the Deputy Commissioner, Kolar District.

~~Abstract~~ [This letter is to be printed in full # Vide Revenue Councillor's order.]

III. Docket No. 487-493 dated 25th November 1897, from the Deputy Commissioner, Chitaldrug District. Reporting ~~Abstract. the Deputy Commr states~~ that the proposed rule may be adopted, as it is calculated to ensure uniformity of procedure, ~~and no objection~~ can be raised against it.

IV. Letter No. 695 dated 1st December 1897, from the Deputy Commissioner, Mysore District. Stating ~~Abstract. No objection~~ that the proposed rules may be adopted.

V. Letter No 656 dated 2nd January 1898, from the Deputy Commissioner, Hassan District.

Abstract. The occupant of a Government tank may have rights to the fruit of the trees standing on the bed ~~or bank~~ of the tank, within the tank, in consideration of his taking care of the existing trees and planting new ones. He should not be allowed to cut them down inasmuch as this would frustrate the object for which the concession is granted, although he may utilize dry trees.

VI. Letter No 796-658, dated 8th January 1898, from the

Deputy Commissioner,
Shimoga District Stating that

~~Abstract~~ There is no
necessity for laying down
the proposed rules, as they
are merely a declaration
of what should be under-
-stood as the existing law.

The Sub Division Officer
of Sagar Suggests the addition
of a common proviso to
both the rules, expressly
prohibiting the cutting of
the trees in question, leaving
the ryot free to remove
them only after they die.

VII Letter No 592 dated
25th February 1898, from
the Deputy Commissioner,
Kadur District Stating that

~~Abstract~~. The right to
trees on the banks or beds
of streams included in an

occupied Survey number,
cannot be extended to the
occupants in cases in
which such streams, nalas,
etc., are deducted as
"Pot Kharab" and no
assessment is levied on the
extent so deducted.

VIII. Letter No. 342, dated
13th March 1893, from
the Deputy Commissioner,
Junker District. No.

Abstract. Well defined
Streams and channels
should not be included
in private lands, as such
Streams and channels are
often feeders of tanks,
whose interests are prejudicially
affected by such inclusion.
If it be found inconvenient
to exclude them from assessed
Survey numbers, they may

be regarded as Part Kharaid and the Govt right to the trees and grass growing on their banks or bed may be made over to the occupant at a valuation, subject to the proviso that he shall not in any way interfere with the flow of water in them.

IX. Memo, dated 19th Novr 1897, from the Director of Agricultural and other Statistics in Mysore.

Extract. Stating that the area occupied by important feeder channels of tanks should be registered as Kharab and deducted from the area assessed for cultivation so that no private rights of occupancy in respect of them might arise. It is undesirable unnecessarily to create

Land Tenures

ownership in trees growing on land which is not private property such as the banks of rivers and streams.

(3) Letter No. 2233 - P. F. 25-97 dated 14th September 1895, to the Superintendent Mysore Revenue Survey, forwarding a copy of letter No. 1723 & 92, dated 13th November 1897, from the Dy. Commr., Kolar &c., for any remark he may wish to make and requesting him to explain why the streams and channels in all such cases should not be excluded from the holding and treated as reserved land.

(4) Letter No 220, dated.

78

23rd September 1878, from the Superintendent of Revenue Survey in Mysore.

[This letter is to be printed in full. Vide the Revenue Councillor's order]

Proceedings of the Government of the Bay ...

Read the following papers:—

(1) Proceedings of Government No. 3168-76-Rev. 478, dated 23rd September 1897, circulating to the Deputy Commissioners of Districts and the Director of Agricultural and other Statistics, the following draft Rules proposed by the Superintendent, Revenue Survey, regarding the right to trees on the banks & in the beds of streams included in and forming parts of, occupied Survey numbers, and requesting them to favor Government with their opinions regarding their adoption:

"1. If trees other than Sandal or trees Specially reserved under section 42 of the Land Revenue Code, are upon the banks or a bed of a stream included in an occupied Survey number they belong to the occupant.

"2. When a stream forms the boundary of an occupied Survey number, the occupant should be allowed the benefit of the trees on the area record in the Survey Registers, all beyond it be considered the property of Government, subject to the provisions of the Land Revenue Code regarding alienation - Section 37 and 62."

READ THE FOLLOWING PAPERS—

(1) Proceedings of Government No. 3168-76—Pet. 478, dated 23rd September 1897, circulating to the Deputy Commissioners of districts and the Director of Agricultural and other statistics, the draft Rules proposed by the Superintendent, Revenue Survey, regarding the right to trees on the banks and in the beds of streams included in, and forming parts of, occupied survey numbers, and requesting them to favor Government with their opinions regarding their adoption.

(2) Replies to the above—

I. Letter No. 609, *dated* 12*th November* 1897, *from the Deputy Commissioner, Bangalore district,*

With reference to Government Order No. 3168-76 —Pet. 478 of the 23rd September 1897, calling for opinion on the Survey Superintendent's suggestion to allow the right to trees on the banks and in the beds of streams to the holders of the survey fields in which such streams lie, I beg to submit that, in my humble opinion, the proposed concession is much too liberal.

If the area occupied by such streams is deducted at the time of the survey settlement and is left without assessment, I fail to see the reasonableness of conceding to the holders of the fields in which such streams lie, the right to the trees on such area. If such area is not so deducted, but is assessed, the trees thereon should of course go to the holders of the fields in which it is included and assessed.

II. Letter No 1723—492, *dated* 13*th November* 1897, *from the Deputy Commissioner, Kolar district.*

With reference to Government Proceedings No. 3168-76—Pet. 478, dated 23rd September 1897, I have the honor to state that I concur generally with the views expressed by the Superintendent of the Revenue Survey. The Rules enunciated in para 5 of his letter appear also suitable, but there are some drawbacks in the practical working of these rules on which it is desirable to have definite instructions.

2. Jungle streams may be divided broadly into two kinds, *viz.*, large and small. In the case of the smallest streams, as a rule, the Survey Department include their beds in the survey number on one side deducting their extent as phutkharab and have only one set of bandhs erected on the opposite bank to mark off the boundary of the fields on that side. But it happens very often that the owners of the latter fields assert their right to graze in the bed of the stream quite as much as the owner of fields on the opposite side. In such cases the action of the Survey Department in including the whole stream to the fields on one side, is productive of hardships, and the raiyats complain of the actions of the Survey Department as arbitrary.

3. Again in the case of the major streams though the beds are not included in survey numbers on either side, no boundary marks are generally put up to indicate the land reserved for the margin of the stream, and it will not be easy to work the second rule without recourse to the measurement books (Tippani). In this connection it is also desirable to consider the provisions of Section 62 of the Land Revenue Code which recognizes the title of the occupants of lands on the back of a stream to the temporary use and occupation of alluvial formations of small extent.

4. In conclusion, I would add that, before giving effect to any rules on this subject, provision should be made for selling to occupants themselves or others kharab lands exceeding a given minimum in extent as well as trees on the margin which have hitherto been recognized as Government property.

III. Docket No. 487—458, *dated* 25*th November* 1897, *from the Deputy Commissioner, Chitaldrug district.*

With reference to Proceedings of Government No. 3168-76—Pet. 478, dated 23rd September last, regarding the right of occupants of lands to trees growing in the bed and on the banks of streams in their holding, has the honor to state that the rule proposed by the Superintendent, Revenue Survey, may be adopted, as it is calculated to ensure uniformity of procedure and no objection can be raised against it.

IV Letter No 698 dated 11th December 1897, from the Deputy Commissioner Mysore District, stating that the rules proposed may be adopted

V Letter No 686 dated 2nd January 1898 from the Deputy Commissioner Hassan District stating that he agrees with Col. Grant's considering that the trees standing within an occupied Survey number are the property of the occupant whether the portion or portions on which they stand, are or are not deducted as Phut Kharab; but if the Phut Kharab forms the bed or bank of a Stream, the occupant may have rights to the fruit of the trees in consideration of his taking care of the existing trees and planting new ones and that the occupant should not be allowed to cut them down, inasmuch as this would frustrate the object for which the concession is granted, although he may utilize dry trees.

VI Letter No 796-658 dated 8th January 1898, from the Deputy Commissioner Shimoga District stating that there is no necessity for laying down the proposed rules, as they are merely a declaration of what should be understood as the existing law.

IV. Letter No. 698, *dated 11th December* 1897, *from the Deputy Commissioner, Mysore district.*

Adverting to Government Proceedings No. 3168-76—Pet. 478, dated 23rd September 1897, circulating, for opinion, the draft Rules proposed by the Superintendent, Revenue Survey, regarding the right to trees on the banks and beds of streams included in, and forming part of, occupied survey numbers, I have the honor to state that the rules proposed by the Survey Superintendent in para 5 of his letter embodied in the said Proceedings appear reasonable, and may, I think, be adopted.

V. Letter No. 666, *dated 2nd January* 1898, *from the Deputy Commissioner, Hassan district.*

Adverting to the Government Proceedings No. 3168-76—Pet. 478, dated 23rd September last, I have the honor to state that I agree with Colonel Grant in considering that the trees standing within an occupied survey number are the property of the occupant whether the portion or portions on which they stand are or are not deducted as phutkharab; but if the phutkharab forms the bed or bank of a stream, the occupant may have rights for the fruit of the trees in consideration of his taking care of the existing trees and planting new ones. He should not be allowed to cut them down inasmuch as this would frustrate the object for which the concession is granted, although he may utilize dry trees.

VI. Letter No. 796—658, *dated 8th January* 1898, *from the Deputy Commissioner, Shimoga district.*

In reply to Government Proceedings No. 3168-76—Pet. 478, dated 23rd September 1897, calling for opinion on the draft Rules proposed by the Superintendent, Revenue Survey, regarding the right to trees on the banks and beds of streams included in, and forming part of, occupied survey numbers, I have the honor to submit my opinion as follows:—

2. The proposed Rule No. 1 in the general form in which it appears seems to me to be unnecessary, as the general rule of law stated by the Superintendent of Revenue Survey in paragraph 6 of his letter is well recognised and is sufficient for the purpose. I would therefore (if at all) restrict the rule so as to give the right of trees standing on parts of the land deducted as "phutkharab" to the occupant. I believe, however, that even this is unnecessary, as, under the law in force, the occupant has the right of enjoying all "phutkharab" in any manner he can except of course so as to interfere with any specific purpose for which such kharab may have been reserved.

3. The second rule would also be unnecessary, but for the fact that where well defined streams exist as boundaries, boundary marks may be dispensed with. As such streams generally differ in area occupied at different times, it may have disputes to enact a rule like this. But even without it, I am of opinion, that every dispute would have to be disposed of in accordance with its principle.

4. On the whole, therefore, I am of opinion, though with diffidence, that there is no necessity for the laying down of these rules, as they are merely a declaration of what should be understood as the existing law.

5. Of the District Officers consulted, the Sub-Division Officer of Sagar has suggested some amendments and a copy of his letter is appended. The two General Assistant Commissioners are for the rules being enacted as proposed.

(Enclosure.)

Letter No. 168, *dated* 21*st December* 1897, *from the Sub-Division Officer, Sagar, to the Deputy Commissioner, Shimoga district.*

In reply to your memorandum No. 1389 of the 18th November 1897, I have the honor to submit the following remarks.

2. The case which has arisen in the Tumkur district is a very simple one.

A tank feeder passes through two occupied fields. The huge trees growing on the banks and bed of the stream were included by the Amildar in the Amarayi sale. It now turns out that the "phutkharab" deducted from the numbers in question does not include the feeder channel which is therefore an integral part of the assessed area. If the Amildar had seen the necessity for finding this out by reference to the Survey Department, there would probably have been no interference with the undoubted rights of the occupant. I have not come across cases in which such trees have been specially reserved under Section

42 of the Land Revenue Code; as, however, the proposed Rule No. 1 has suggested itself to the far wider experience of the Superintendent of Revenue Survey, it may be retained with perhaps the addition of the words "and whether deducted as phutkharab or not" after the words occupied survey number" and before the word "they".

3. Proposed Rule No. 2 appears well worthy of adoption. But I would suggest the addition of a common proviso to both the rules, expressly prohibiting the cutting of the trees so situated, leaving the raiyat free to remove them only after they die.

The Amildars in the sub-division have not replied to my circular inviting their opinions on the subject.

VII. *Letter No.* 592, *dated* 25*th February* 1898, *form the Deputy Commissioner, Kadur district,*

Stating that the right to trees on the banks or beds of streams included in an occupied Survey number, cannot be extended to the occupants in cases in which such streams, nalas, etc., are deducted as "Phut kharab" and no assessment is levied on the extent so deducted.

With reference to your circular [illegible] ing for expression of my opinion, the amendments urged by the Revenue Survey Superintendent in regard to the rights of trees growing on the dry beds of channels running within the occupancy of a survey number, I have the honor to state that I quite agree with the Survey Superintendent in his proposal made in para 5 of his letter to Government, but in para 7 of the same he states that such rights to trees may be extended even to cases in which the streams running through a survey number is deducted as "phutkharab." In regard to this, I beg respectfully to differ from the liberal views the Survey Superintendent has taken of the matter.

2. The rights to trees ought not, in my opinion, to be extended to raiyats more than are now existing, unless the stream has not been deducted from his holding as phutkharab.

3. If the stream is deducted as such, the proportionate assessment is reduced and the holder cannot have any right to trees or their usufruct.

VIII. *Letter No.* 842, *dated* 12*th March* 1898, *from the Deputy Commissioner, Tumkur district,*

Stating that well-defined streams and channels should not be included in private lands, as such streams and channels are often feeders of tanks, whose interests are prejudicially affected by such inclusion. If it be found inconvenient to exclude them from assessed Survey numbers they may be regarded as "Phut kharab" and the Government right to the trees and grass growing on their banks or bed, may be made over to the occupant at a valuation, subject to the proviso that he shall not in any way interfere with the flow of water

and feeder channels do not come under this category, and it seems to me reasonable that the occupant of a land in which such stream or channel has been included by the Survey Department should pay for the trees.

IX. Memo, dated 19th November 1897, from the Director of Agricultural and other Statistics

in Mysore, stating that the area occupied by important feeder channels of tanks should be registered as Kharab and deducted from the area assessed for cultivation, so that no private rights of occupancy in respect of them might arise and that it is undesirable unnecessarily to create ownership in trees growing on land which is not private property such as the banks of rivers and streams.

(3) Letter No. 2233—P. F. 2597, dated 14th September 1898, to the Superintendent, Mysore Revenue Survey, forwarding a copy of letter No. 1723—492, dated 13th November 1897, from the Deputy Commissioner, Kolar district, for any remark he may wish to make, and requesting him to explain why the streams and channels in all such cases should not be excluded from the holding and treated as a reserved land.

(4) *Letter No* 220, *dated* 23*rd September* 1898, *from the Superintendent of Revenue Survey in Mysore.*

I have the honor to acknowledge the receipt of your letter No. 2233—Pet. F. 25-97, dated 17th September 1898, forwarding copy of Deputy Commissioner's letter No. 1723—492 of 13th November 1897, on the subject of draft Rules regarding the right to trees on the banks and beds of streams included in, and forming parts of, occupied survey numbers, and at the same time asking me to explain why the streams and channels in all such cases should not be excluded from the holding and treated as reserved land.

2. I will first of all, as far as possible, meet the Deputy Commissioner's remarks as to the drawbacks to the practical working of the Rules suggested by me in my letter No. 355 of the 28th June 1897.

3. The Deputy Commissioner suggests, with reference to the larger jungle streams excluded from the adjoining survey numbers, that no boundary marks being usually put up, it will be difficult to work Rule 2 as proposed by me without the aid of the Measuring Field Book. As a matter of fact the survey orders are to the effect that a bandh must be put up showing the direction in which the boundary of any survey, branches off from the stream

and at the bends of the stream itself stones are to be erected. I dare say these stones may not be easily found now, because they have not been regularly inspected and kept up and also stones are very easily washed away on the banks of streams. It was for this reason that in Rule 2, I made the recorded area of the survey number regulate the limit to which the occupant of the survey number in question could claim rights in the stream. Very numerous cases requiring measurement are not likely to occur and, moreover, in most cases the map itself will be quite sufficient to adjust all encroachments. The point raised cannot affect the suitability of the rule proposed.

4. Next it is stated that, as a rule, the minor jungle streams are included in one or other of the adjoining survey number, and that the occupant of the survey number in which it has not been included asserts equal rights with the occupant of the other survey number. To this I can only state that, at the time of measurement, the survey numbers were marked according to the showing of the parties interested as to enjoyment, and any disputes should have been at once taken up for settlement. Generally in such cases, unless the stream is a very deep and marked one, enjoyment by one or other of the parties can be shown. It appears to me very late in the day to allow disputes to be reopened.

5. Beyond the above the Deputy Commissioner makes no objections to the proposed Rules.

6. As regards the question which is now raised in your letter under reply, as to why the streams and channels, in all such cases, should not be excluded from the holding and treated as reserved land, I can only state that, in my opinion, apart from the inconvenience and in some cases unfairness to the ryots, the magnitude of the operation and the increase of demarcation would be prohibitive.

No. 612-9 / R.T. 25-97 DATED BANGALORE, 2nd March 1899.

ORDER THEREON.—The draft Rules proposed by the Survey Superintendent are sanctioned.

2. The following Notification will be published in the *Mysore Gazette*:—

NOTIFICATION, &c. 612-9 / R.T. 25-97.

In exercise of the powers conferred by clause *(d)* of Section 233 of the Land Revenue Code, the Government of Mysore are pleased to make the following Rule to be read as Rule XIII A of the Rules under the Land Revenue Code, published under Notification No. 150, dated 22nd July 1890:—

Right to trees on the banks and in the beds of streams included in, and forming parts of, occupied survey numbers.

XIII A. (1) If trees, other than sandal or trees specially reserved under Section 42 of the Land Revenue Code, grow upon the banks or dry bed of a stream included in an occupied survey number, they belong to the occupant

2. When a stream forms the boundary of an occupied survey number, the occupant should be allowed the benefit of the trees on the area recorded in the Survey Registers, all beyond it being considered the property of Government subject to the provisions of the Land Revenue Code regarding alluvion, Sections 61 and 62.

C. SREENIVASIENGAR,
Secy. to Govt., Gen. & Rev. Depts.

To—The Deputy Commissioners of Districts.
The Superintendent of Revenue Survey in Mysore.

Exd.—H.A.B.

1898-99

GOVERNMENT OF MYSORE

REVENUE

PROCEEDINGS

Dated 2/3/99 1899

No. 6120-28 RA 25-97

"Proof revised and submitted for approval. Please see Secretary's notes on the draft.

Sanctioning the draft Rules proposed by the Superintendent of Revenue Survey, regarding the right to trees on the banks and beds of streams included in, and forming part of, occupied survey numbers."

MGEPB—24-1-98—400

Read to Rev. E. Dn.

Rep. by post 6/2/99

13/2/99 Reply to the

(197) new rule proposed to be added to Rule XIII of the Land Revenue Rules. I have only one suggestion to make & that is in connection with the word "trees" which is unconstitutional & ambiguous. It is necessary to define the word "trees" in the Rules. The word "trees" is not defined in the Land Revenue Rules. It is necessary to define the word "trees" in the Rules. The word "trees" is not defined in the Land Revenue Rules. It is necessary to define the word "trees" in the Rules.

Rev:

This is a general question raised & not so before the Rev. E. Dn. This arose out of a petition, & deals

READ THE FOLLOWING PAPERS:—

(I) Proceedings of Government No. 3163-76—Pet. 478, dated 23rd September 1897 circulating to the Deputy Commissioners of districts and the Director of Agricultural and other Statistics, the following draft Rules proposed by the Superintendent, Revenue Survey, regarding the right to trees on the banks and in the beds of streams included in, and forming parts of, occupied survey numbers, and requesting them to favor Government with their opinions regarding their adoption :—

"1. If trees other than sandal or trees specially reserved under Section 12 of the Land Revenue Code, grow upon the banks or dry bed of a stream included in an occupied survey number, they belong to the occupant."

"2. When a stream forms the boundary of an occupied survey number, the occupant should be allowed the benefit of the trees on the area recorded in the Survey Registers, all beyond it being considered the property of Government subject to the provisions of the Land Revenue Code regarding alluvion—Sections 61 and 62."

(II) The following replies to the above:—

(i) Letter No. 609, dated 12th November 1897, from the Deputy Commissioner, Bangalore district, stating that the concession proposed in the draft Rules is much too liberal; that if the area occupied by streams is deducted at the time of the survey settlement, there is no reason to concede to the holders of the fields wherein the streams lie, the right to trees on such area and that if such area is not deducted but is assessed, the trees thereon should go to the holders of the fields in which it is included and assessed.

(ii) *Letter No.* 1723—492, *dated* 15*th November* 1897, *from the Deputy Commissioner, Kolar district.*

With reference to Government Proceedings No. 3163-76—Pet. 478, dated 23rd September 1897, I have the honor to state that I concur generally with the views expressed by the Superintendent of the Revenue Survey. The Rules enunciated in para 5 of his letter appear also suitable, but there are some drawbacks in the practical working of these rules on which it is desirable to have definite instructions.

2. Jungle streams may be divided broadly into two kinds, *viz.*, large and small. In the case of the smallest streams, as a rule, the Survey Department include their beds in the survey number on one side deducting their extent as Phut kharab and have only one set of bandhs erected on the opposite bank to mark off the boundary of the fields on that side. But it happens very often that the owners of the latter fields assert their right to graze in the bed of the stream quite as much as the owner of fields on the opposite side. In such cases the action of the Survey Department in including the whole stream in the fields on one side, is productive of hardships, and the raiyats complain of the actions of the Survey Department as arbitrary.

3. Again in the case of the major streams though the beds are not included in survey numbers on either side, no boundary marks are generally put up to indicate the land reserved for the margin of the stream, and it will not be easy to work the second rule without recourse to the measurement books (Tippani). In this connection it is also desirable to consider the provisions of Section 62 of the Land Revenue Code which recognizes the title of the occupants of lands on the back of a stream to the temporary use and occupation of alluvial formations of small extent.

4. In conclusion, I would add that, before giving effect to any rules on this subject, provision should be made for selling to occupants themselves or others kharab lands exceeding a given minimum in extent as well as trees on the margin which have hitherto been recognized as Government property.

(iii) Docket No. 487—453, dated 25th November 1897, from the Deputy Commissioner, Chitaldrug district, reporting that the proposed rule may be adopted, as it is calculated to ensure uniformity of procedure.

(iv) Letter No. 698, dated 11th December 1897, from the Deputy Commissioner, Mysore district, stating that the rules proposed may be adopted.

(v) Letter No. 666, dated 2nd January 1898, from the Deputy Commissioner, Hassan district, stating that he agrees with Colonel Grant in considering that the trees standing within an occupied survey number are the property of the occupant whether the portion or portions on which they stand, are or are not deducted as Phut kharab; but if the Phut

1898-99

GOVERNMENT OF MYSORE

REVENUE

PROCEEDINGS

Dated 2nd March 1899

No. 6120-28 R. F. 25-97

Sanctioning the draft Rules proposed by the Superintendent of Revenue Survey, regarding the right to trees on the banks and beds of streams included in, and forming part of, occupied survey numbers.

M. G. C. P. B—4-3-99—200

L.R. 165-97-13

89

which it has not been included asserts equal rights with the occupant of the other survey number. To this I can only state that, at the time of measurement, the survey numbers were measured according to the showing of the parties interested, as to enjoyment, and any dispute would have been at once taken up for settlement. Generally in such cases, unless the stream is a very deep and marked one, enjoyment by one or other of the parties can be shown. It appears to me very late in the day to allow disputes to be reopened.

5. Beyond the above the Deputy Commissioner makes no objections to the proposed Rules.

6. As regards the question which is now raised in your letter under reply, as to why the streams and channels, in all such cases, should not be excluded from the holding and treated as reserved land, I can only state that, in my opinion, apart from the inconvenience and in some cases unfairness to the raiyats, the magnitude of the operation and the increase of demarcation would be prohibitive.

No. 6120-28—R. F. 25-97, DATED BANGALORE, 2ND MARCH 1899.

ORDER THEREON.—The draft Rules proposed by the Survey Superintendent are sanctioned.

2. The following Notification will be published in the *Mysore Gazette*:—

Notification No. 6129—*R. F.* 25-97, *dated 2nd March* 1899.

In exercise of the powers conferred by clause (*d*) of Section 233 of the Land Revenue Code, the Government of Mysore are pleased to make the following Rule to be read as Rule XIII A of the Rules under the Land Revenue Code, published under Notification No. 150, dated 22nd July 1890.—

Right to trees on the banks and in the beds of streams included in, and forming parts of, occupied survey numbers.

XIII A. (1) If trees other than sandal or trees specially reserved under Section 42 of the Land Revenue Code, grow upon the banks or dry bed of a stream included in an occupied survey number, they belong to the occupant.

(2) When a stream forms the boundary of an occupied survey number, the occupant should be allowed the benefit of the trees on the area recorded in the Survey Registers, all beyond it being considered the property of Government subject to the provisions of the Land Revenue Code regarding alluvion. (Sections 61 and 62.)

C. SREENIVASIENGAR,
Secy. to Govt., Gen. & Rev. Depts.

To—The Deputy Commissioners of Districts.
The Superintendent of Revenue Survey in Mysore.

Ext.—H.A.R.

kharab forms the bed or bank of a stream, the occupant may have rights to the fruit of the trees in consideration of his taking care of the existing trees and planting new ones and that the occupant should not be allowed to cut them down, inasmuch as this would frustrate the object for which the concession is granted, although he may utilize dry trees.

(vi) Letter No. 796—658, dated 3th January 1898, from the Deputy Commissioner, Shimoga district, stating that there is no necessity for laying down the proposed rules, as they are merely a declaration of what should be understood as the existing law.

(vii) Letter No. 592, dated 25th February 1898, from the Deputy Commissioner, Kadur district, stating that the right to trees on the banks or beds of streams included in an occupied survey number, cannot be extended to the occupants in cases in which such streams nalas, etc., are deducted as "Phut kharab" and no assessment is levied on the extent so deducted.

(viii) Letter No. 842, dated 13th March 1898, from the Deputy Commissioner, Tumkur district, stating that well-defined streams and channels should not be included in private lands, as such streams and channels are often feeders of tanks, whose interests are prejudicially affected by such inclusion. If it be found inconvenient to exclude them from assessed survey numbers, they may be regarded as "Phut kharab" and the Government right to the trees and grass growing on their banks or bed, may be made over to the occupant at a valuation, subject to the proviso that he shall not in any way interfere with the flow of water in them.

(ix) Memo, dated 19th November 1897, from the Director of Agricultural and other Statistics in Mysore, stating that the area occupied by important feeder channels of tanks should be registered as kharab and deducted from the area assessed for cultivation, so that no private rights of occupancy in respect of them might arise, and that it is undesirable unnecessarily to create ownership in trees growing on land which is not private property such as the banks of rivers and streams.

(III) Letter No. 2233—P. F. 25-97, dated 14th September 1898, to the Superintendent of Revenue Survey in Mysore, forwarding a copy of letter No. 1723—492, dated 13th November 1897, from the Deputy Commissioner, Kolar district, for any remark he may wish to make, and requesting him to explain why the streams and channels in all such cases should not be excluded from the holding and treated as a reserved land.

(IV) *Letter No. 220, dated 22rd September 1898, from the Superintendent of Revenue Survey in Mysore.*

I have the honor to acknowledge the receipt of your letter No. 2233—Pet. F. 25-97, dated 17th September 1898, forwarding copy of Deputy Commissioner's letter No. 1723—492 of 13th November 1897, on the subject of draft Rules regarding the right to trees on the banks and beds of streams included in, and forming parts of, occupied survey numbers, and at the same time asking me to explain why the streams and channels in all such cases should not be excluded from the holding and treated as reserved land.

2. I will first of all, as far as possible, meet the Deputy Commissioner's remarks as to the drawbacks to the practical working of the Rules suggested by me in my letter No. 855 of the 28th June 1897.

3. The Deputy Commissioner suggests, with reference to the larger jungle streams excluded from the adjoining survey numbers, that no boundary marks being usually put up, it will be difficult to work Rule 2 as proposed by me without the aid of the Measuring Field Book. As a matter of fact the survey orders are to the effect that a bandh must be put up showing the direction in which the boundary of any survey branches off from the stream and at the bends of the stream itself stones are to be erected. I daresay these stones may not be easily found now, because they have not been regularly inspected and kept up and also stones are very easily washed away on the banks of streams. It was for this reason that, in Rule 2, I made the recorded area of the survey number regulate the limit to which the occupant of the survey number in question could claim rights in the stream. Very numerous cases requiring measurement are not likely to occur and, moreover, in most cases the map itself will be quite sufficient to adjust all encroachments. The point raised cannot affect the suitability of the rule proposed.

4. Next it is stated that, as a rule, the minor jungle streams are included in one or other of the adjoining survey number and that the occupant of the survey number in